

## Internal Revenue Service, Treasury

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also treated as readily tradable in an established securities market (whether or not such notes are actually traded).

(5) *Special rule for convertible securities*—(i) *General rule.* If an obligation contains a right whereby the holder of such obligation may convert it directly or indirectly into another obligation which would be treated as a payment under paragraph (e)(1) of this section or may convert it directly or indirectly into stock which would be treated as readily tradable or designed to be readily tradable in an established securities market under paragraph (e)(4) of this section, the convertible obligation shall be considered to be in a form designed to render such obligation readily tradable in an established securities market unless such obligation is convertible only at a substantial discount. In determining whether the stock or obligation into which an obligation is convertible is readily tradable or designed to be readily tradable in an established securities market, the rules stated in paragraph (e)(4) of this section shall apply, and for purposes of such paragraph (e)(4) if such obligation is convertible into stock then the term “stock” shall be substituted for the term “obligation” wherever it appears in such paragraph (e)(4).

(ii) *Substantial discount rule.* Whether an obligation is convertible at a substantial discount depends upon the particular facts and circumstances. A substantial discount shall be considered to exist if at the time the convertible obligation is issued, the fair market value of the stock or obligation into which the obligation is convertible is less than 80 percent of the fair market value of the obligation (determined by taking into account all relevant factors, including proper discount to reflect the fact that the convertible obligation is not readily tradable in an established securities market and any additional consideration required to be paid by the taxpayer). Also, if a privilege to convert an obligation into stock or an obligation which is readily tradable in an established securities market may not be exercised within a period of one year from the date the obligation is issued, a substantial discount shall be considered to exist.

(6) *Effective date.* The provisions of this paragraph (e) shall apply to sales or other dispositions occurring after May 27, 1969, which are not made pursuant to a binding written contract entered into on or before such date. No inference shall be drawn from this section as to any questions of law concerning the application of section 453 to sales or other dispositions occurring on or before May 27, 1969.

[T.D. 7768, 46 FR 10709, Feb. 4, 1981; 46 FR 13688, Feb. 24, 1981; 46 FR 43036, Aug. 26, 1981, as amended by T.D. 7788, 46 FR 48920, Oct. 5, 1981; T.D. 8535, 59 FR 18751, Apr. 20, 1994]

**§ 15a.453-2 Installment obligations received as liquidating distribution.**  
[Reserved]

## PART 16—TEMPORARY REGULATIONS UNDER THE REVENUE ACT OF 1962

AUTHORITY: Sec. 7805, 68 Stat. 917; 26 U.S.C. 7805.

### § 16.3-1 Returns as to the creation of or transfers to certain foreign trusts.

(a) *Requirement of return.* Every United States person who, on or after October 16, 1962, either creates a foreign trust or transfers money or property to a foreign trust, directly or indirectly, shall file an information return on Form 3520, except as provided in subparagraph (4) of paragraph (d) of this section. The return must be filed by the grantor or the transferor, or the fiduciary of the estate in the case of a testamentary trust. The return must be filed whether or not any beneficiary is a United States person and whether or not the grantor or any other person may be treated as the substantial owner of any portion of the trust under sections 671-678.

(b) *Meaning of terms.* For purposes of this section the following terms shall have the meaning assigned to them in this paragraph:

(1) *Foreign trust.* See section 7701(a)(31) of the Code for the definition of foreign trust.

(2) *United States person.* See section 7701(a)(30) of the Code for the definition of United States person.

(3) *Grantor.* The term “grantor” refers to any United States person who by an inter vivos declaration or agreement creates a foreign trust.

(4) *Transferor.* The term “transferor” refers to any United States person, other than a person who is the grantor or the fiduciary (as defined in subparagraph (5) of this paragraph), who transfers money or property to or for the benefit of a foreign trust. It does not refer to a person who transfers money or property to a foreign trust pursuant to a sale or an exchange which is made for full and adequate consideration.

(5) *Fiduciary of an estate.* In the case of a testamentary trust expressed in the will of a decedent the term “fiduciary of an estate” refers to the executor or administrator who is responsible for establishing a foreign trust on behalf of the decedent.

(c) *Information required.* The return required by section 6048 and this section shall be made on Form 3520 and shall set forth the following information:

(1) The name, address, and identifying number of the person (or persons) filing the return, a statement identifying each person named as either a grantor, fiduciary of an estate, or transferor, and the date of the transaction for which the return is being filed;

(2) In the case of a fiduciary of an estate, the name and identifying number of the decedent;

(3) The name of the trust and the name of the country under whose laws the foreign trust was created;

(4) The date the foreign trust was created and the name and address of the person (or persons) who created it;

(5) The date on which the trust is to terminate or a statement describing the conditions which will cause the trust to terminate;

(6) The name and business address of the foreign trustee (or trustees);

(7) A statement either that the trustee is required to distribute all of the trust's income currently (in which case the information required in subparagraph (c)(9) of this paragraph need not be furnished) or a statement that the trust may accumulate some or all of its income;

(8) The name, address, and identifying number, if any, of each beneficiary who is either named in the instrument or whose identity is definitely ascertainable at the time the return required by this section is filed, and the date of birth for each beneficiary who is a United States person and whose rights under the trust are determined, in whole or in part, by reference to the beneficiary's age;

(9) Except as provided in subparagraph (c)(7) of this paragraph, a statement with respect to each beneficiary setting forth his right to receive income or corpus, or both, from the trust, his proportionate interest, if any, in the income or corpus, or both, of the trust, and any condition governing the time when a distribution to him may be made, such as a specific date or age (or in lieu of such statement a copy of the trust instrument which must be attached to the return);

(10) A detailed list of the property transferred to the foreign trust in the transaction for which the return is being filed, containing a complete description of each item transferred, its adjusted basis and its fair market value on the date transferred, and the consideration, if any, paid by the foreign trust for such transfer; and

(11) The name and address of the person (or persons) having custody of the books of account and records of the foreign trust, and the location of such books and records if different from such address.

(d) *Special provisions—*(1) *Separate return for each foreign trust and each transfer.* If a United States person creates more than one foreign trust or transfers money or property to more than one foreign trust, then separate returns must be filed with respect to each foreign trust where returns are required under section 6048 and this section. If a United States person transfers money or property to the same foreign trust at different times, then separate returns must be filed with respect to each transfer where returns are required under section 6048 and this section. However, where more than one transfer to the same foreign trust is made by a United States person during any 90-day period, such person may, at his election, file a single return, so

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long as the return includes the information required with respect to each transfer and is filed on or before the 90th day after the earliest transfer in any such period.

(2) *Joint returns.* Where returns are required under section 6048 and this section by two or more persons who either jointly create a foreign trust or jointly transfer money or property to a foreign trust, they may jointly execute and file one return in lieu of filing several returns.

(3) *Actual ownership of money or property transferred.* If any person referred to in this section is not the real party in interest as to the money or property transferred but is merely acting for a United States person, the information required under this section shall be furnished in the name of and by the actual owner of such money or property, except that a fiduciary of an estate shall file information relating to the decedent.

(4) *Payments to an employees' trust, etc.* In the case of contributions made to a foreign trust under a plan which provides pension, profit-sharing, stock bonus, sickness, accident, unemployment, welfare, or similar benefits or a combination of such benefits for employees, neither employers nor employees shall be required to file a return as set forth in this section.

(e) *Time and place for filing return—(1) Time for filing.* Any return required by section 6048 and this section shall be filed on or before the 90th day after either the creation of any foreign trust by a United States person or the transfer of any money or property to a foreign trust by a United States person. The Director of International Operations is authorized to grant reasonable extensions of time to file returns under section 6048 and this section in accordance with the applicable provisions of section 6081(a) and § 1.6081-1.

(2) *Place for filing.* Returns required by section 6048 and this section shall be filed with the Director of International Operations, Internal Revenue Service, Washington D.C. 20225.

(f) *Penalties—(1) Criminal.* For criminal penalties for failure to file a return see section 7203. For criminal penalties for filing a false or fraudulent return, see sections 7206 and 7207.

(2) *Civil.* For civil penalty for failure to file a return or failure to show the information required on a return under this section, see section 6677.

[T.D. 6632, 28 FR 277, Jan. 10, 1963]

### PART 16A—TEMPORARY INCOME TAX REGULATIONS RELATING TO THE PARTIAL EXCLUSION FOR CERTAIN CONSERVATION COST-SHARING PAYMENTS

Sec.

16A.126-0 Effective dates.

16A.126-1 Certain cost-sharing payments—in general.

16A.126-2 Section 126 elections.

16A.1255-1 General rule for treatment of gain from disposition of section 126 property.

16A.1255-2 Special rules.

AUTHORITY: Secs. 126 and 7805 of the Internal Revenue Code of 1954 (92 Stat. 2888, 26 U.S.C. 126; 68A Stat. 917, 26 U.S.C. 7805).

SOURCE: T.D. 7778, 46 FR 27637, May 21, 1981, unless otherwise noted.

#### § 16A.126-0 Effective dates.

These temporary regulations shall apply to any payments received under a contract signed by the taxpayer and the appropriate agency after September 30, 1979.

#### § 16A.126-1 Certain cost-sharing payments—in general.

(a) *Introduction.* In general, section 126 provides that recipients of payments made after September 30, 1979 under certain conservation, reclamation and restoration programs may exclude all or a portion of those payments from income if the payments do not substantially increase the annual income derived by the taxpayer from the affected property. For purposes of this section, the term "payment" as used in section 126 means payment of the economic benefit, if any, conferred upon the taxpayer upon receipt of the improvement. An increase in annual income is substantial if it exceeds the greater of 10 percent of the average annual income derived from the affected property prior to receipt of the improvement or an amount equal to \$2.50 times the number of affected acres. The